IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3073 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 3073 of 1991

MR RR VAKIL for Petitioner

MR HS MUNSHAW for Respondent Nos. 1 & 2

MR MK DAGLI, AGP for Respondent No. 3

MS KUSUM M SHAH for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 16/08/2002

ORAL JUDGEMENT

By filing this petition under Article 226 of the

Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to quash and set aside order dated April 18, 1991, passed by the District Development Officer, Banaskantha at Palanpur, whereby the petitioner is reverted from the post of Electrician to the post of Wireman and respondent no.4 i.e. Mr. N.M.Jani is promoted to the post of Electrical Supervisor. The petitioner has further prayed to direct the respondents to confirm him in the cadre of Electrician and to declare that he is eligible to be promoted to the post of Electrical Supervisor. Further, the petitioner has prayed to direct the respondents to promote him to the post of Electrical Supervisor and accord all the benefits including monetary benefits payable to him in accordance with law.

2. The petitioner was initially appointed as an electrical labourer or helper, and by an order dated November 21, 1964, he was promoted to the post of Wireman. Subsequently, by an order dated November 17, 1971, he was appointed as Electrician. The order dated November 17, 1971 is produced by the petitioner at Annexure-D to the petition, which indicates that his promotion to the post of Electrician was temporary one and subject to the rules and regulations as well as approval by the Gujarat Panchayat Service Selection Board. From the record of the case, it is evident that the appointment of the petitioner on the post of Electrician was not approved by the Gujarat Panchayat Service Selection Board, and the respondent no.4 was found to be suitable for being promoted to the post of Electrical Supervisor. Therefore, by an order dated April 18, 1991, the petitioner has been reverted to the post of Wireman, whereas the respondent no.4 has been promoted to the post of Electrical Supervisor, giving rise to the present petition.

3. I have heard the learned counsel for the parties. The learned counsel for the petitioner contended that the order of reversion of the petitioner from the post of Electrician to the post of Wireman is liable to be set aside because the petitioner was never heard before passing the said order and the principles of natural justice were violated by the respondent no.1. On behalf of the petitioner, it was submitted that the petitioner being senior to the respondent no.4, should have been promoted to the post of Electrical Supervisor and as the promotion granted to respondent no.4 to the post of Electrical Supervisor is contrary to the provisions of the Gujarat Panchayat (Classification and Recruitment) Rules, 1967, the same should be set aside.

4. Mr. H.S.Munshaw, the learned counsel for the respondent no.1, has stated at the Bar that in view of the interim relief granted by the Court in the present petition, the petitioner was continued on the post of Electrician and has retired from service, as such, on November 30, 1994, in the pay-scale of Rs. 1400-2300. It is further stated by the learned counsel for the respondent no.1 that even the retiral benefits have been paid to the petitioner on the basis that he was entitled to hold the post of Electrician and as order of reversion is not going to be implemented, the challenge against reversion order should be negatived on the ground that it has become infructuous. So far as prayer of the petitioner for promotion to the post of Electrical Supervisor is concerned, it was argued that as explained in the affidavit-in-reply of the then District Development Officer, appropriate decision to promote the respondent no.4 to the post of Electrical Supervisor was taken by the Selection Committee comprising District Development Officer, Deputy District Development Officer and the Executive Engineer after taking into consideration the merits of the petitioner as well as that of the respondent no.4, and as the respondent no.4 was found to be suitable for being promoted to the post of Electrical Supervisor, the said decision should not be interfered with by the Court in the present petition.

5. Ms. K.M.Shah, learned counsel for the respondent no.4, contended that on merits, the respondent no.4 was found to be more suitable for being promoted to the post of Electrical Supervisor and as the Selection Committee had also taken into consideration the case of the petitioner before promoting the respondent no.4 to the said post, the promotion granted to the respondent no.4, should not be regarded as illegal by the Court.

6. From the record of the case, it is clear that before passing the order reverting the petitioner to the post of Wireman,the petitioner was never heard. He was not given any opportunity to explain as to how his appointment to the post of Electrician was not bad in law. There is no manner of doubt that the principles of natural justice were violated before reverting the petitioner to the post of Wireman and, therefore, that part of the order dated April 18, 1991, by which the petitioner is reverted to the post of Wireman, is liable to be set aside. Even otherwise, as noted earlier, the learned counsel for the respondent no.1, on instructions, has stated that the reversion order is not going to be implemented because the petitioner has retired as

Electrician on November 30, 1994 and is being paid retiral benefits on that basis. Under the circumstances, the reversion order will have to be set aside and quashed.

7. As far as the question of promotion of the petitioner to the post of Electrical Supervisor is concerned, the affidavit-in-reply filed by the respondent no.1 clearly indicates that relative merits of the petitioner as well as that of the respondent no.4 were considered by the Selection Committee comprising District Development Officer, Deputy District Development Officer and Executive Engineer. In support of the averments made by the then District Development Officer in Para 2 of the affidavit-in-reply, comparative statement of merits of the petitioner and the respondent no.4 is produced at Page 39 of the compilation. The claim of the petitioner that as he was senior to the respondent no.4, he should have been promoted to the post of Electrical Supervisor, cannot be accepted. No employee has fundamental right to be promoted and the only right conferred on an employee is that his case for promotion should be considered by the competent authority. The facts of the case establish that the Selection Committee had considered the case of the petitioner for promotion to the post of Electrical Supervisor, but as he was not found suitable, promotion was denied to him. There is nothing on record to indicate that the Selection Committee had arbitrarily decided to promote the respondent no.4 to the post of Electrical Supervisor. It is well settled that the High Court, while exercising powers under Article 226 of the Constitution, does not act as an appellate Authority against the decision taken by the Selection Committee, nor the High Court would examine the question of suitability of the candidate for promotion, as if the High Court itself were the Selection Committee. From the record of the case, it is manifest that the decision taken by the Selection Committee to promote the respondent no.4 to the post of Electrical Supervisor is in the interest of administration and public at large. Therefore, the same is not liable to be interfered with in the present petition.

For the foregoing reasons, the petition partly succeeds. That part of the order dated April 18, 1991 by which the petitioner is reverted from the post of Electrician to the post of Wireman is hereby set aside and quashed. Second part of the said order, by which the respondent no.4 is promoted to the post of Electrical Supervisor, is hereby upheld. The prayer made by the petitioner to direct the respondents to promote him to

the post of Electrical Supervisor and accord all benefits, is hereby rejected. Rule is made absolute accordingly, with no orders as to costs. Ad-interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)